

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

Atty Atty Dias, Michael A. (for Warren Leslie Davis – Son – Petitioner)

Farley, Michael L. (of Visalia, for Mary M. Davis – Surviving Spouse – Executor)

Petition for Removal of Mary M. Davis as Executor of Estate Compelling Account and Report of Administration of Estate Appointment of Lynette Lucille Duston and Warren Leslie Davis as Successor Co-Executors of Estate, Removal of Mary M. Davis as Trustee of The Testamentary Trusts, Compelling Account and Report information Regarding the Testamentary Trusts and Appointment of Warren Leslie Davis as Successor Trustee of the Testamentary Trust [Prob. C. 8420, 8421, 8500, 8501, 8502, 8800, 8804, 10950, 10952, 12200, 12204, 12205, 15642, 15645, 15660, 15680, 16420 and 17200(b)]

DOD: 7-9-10			
Cont. from 080812,			
082912			
	Aff.Sub.Wit.		
>	Verified		
	Inventory		
	PTC		
	Not.Cred.		
>	Notice of Hrg		
>	Aff.Mail	W	
	Aff.Pub.		
	Sp.Ntc.		
>	Pers.Serv.	W	
	Conf. Screen		
	Letters		
	Duties/Supp		
>	Objections		
	Video		
	Receipt		
	CI Report		
	9202		
•	Order		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
>	Citation		
	FTB Notice		

WARREN LESLIE DAVIS, Son, is Petitioner.

MARY M. DAVIS, Surviving Spouse, was appointed Executor with Full IAEA without bond on 10-18-10.

Petitioner states more than 18 months have elapsed since the issuance of Letters and Mary has neither filed an account nor a status report. Petitioner objects to the continuation of Mary as personal representative of the estate and seeks to remove her pursuant to Probate Code §§ 8502, 8804 for the following reasons:

- Mary has wrongfully neglected the estate and has long neglected to perform any act as personal representative.
- Mary has failed to file an inventory and appraisal.
- Mary has wasted, embezzled, mismanaged, and committed a fraud on the estate. Mary has, inter alia, admitted during a deposition that she has liquidated assets of the Decedent's estate, which were specific bequests to one of the petitioners to pay for her attorney's fees and costs in her two civil actions against Petitioner. (See declaration of Alicia Wrest attached.)
- Mary is incapable of properly executing the duties of the office. Mary is 86 years old and has made unsubstantiated claims for elder abuse in a pending case against one of the beneficiaries and has therein made representations that she is susceptible to undue influence.
- The Court has the power to remove a personal representative for other cause such as adverse interest or hostile acts. Cites referenced.
- Removal is necessary to protect the estate and its heirs. Mary should also be ordered to account and show the condition of the estate.
- Furthermore it is proper for the Court to reduce Mary's and her attorneys' compensation.

SEE ADDITIONAL PAGES

NEEDS/PROBLEMS/COMMENTS:

OFF CALENDAR – Amended Petition filed 9-7-12 is set for hearing on 11-7-12.

Note: Inventory and Appraisal and First Account are overdue. The original petition estimated the value of the estate at approx. \$3,060,000.00.

 Petitioner seeks to have his mother removed as both Executor of this estate <u>and</u> as trustee of the testamentary trusts created under Decedent's will. However, any requests regarding the trusts must be brought separately under appropriate code and pursuant to Local Rule 7.1.2.

Accordingly, within this estate case, the Court can only make orders relating to this estate and its administration.

 Petitioner states Mary currently has two (2) pending actions against beneficiaries involving trust property. Need clarification as to how <u>any</u> property is trust property, as no account or final distribution has been made from this estate to any trust.

Examiner notes that Court records indicate one case has been dismissed and the other was stayed pending arbitration in June 2012. See additional notes on additional page.

Reviewed by: skc
Reviewed on: 9-12-12
Updates:
Recommendation:
File 1A - Davis

<u>1A</u>

1A Fred Erwin Davis (Estate)

Petitioner states he and his sister LYNETTE LUCILLE DUSTON are nominated as successor co-executors in Decedent's will. Petitioner requests that they be appointed as successor co-executors to serve with full IAEA without bond.

Case No. 10CEPR00810

Petitioner further states that Mary M. Davis is the nominated trustee of the testamentary trusts created under the will. Petitioner objects to the continuation of Mary as trustee of the testamentary trusts and hereby seeks to remove her as trustee because she has breached the trusts, is insolvent and unfit to administer the trusts. Petitioner provides a list of reasons with reference to Probate Code §§ 16060-16062 and §§ 16002-16009.

<u>Examiner's note</u>: As noted in NEEDS/PROBLEMS/COMMENTS #1 above, trust issues cannot be addressed together with estate issues in this estate case. Pursuant to Local Rule 7.1.2, a separate matter must be established. As such, Examiner has not reviewed the sections relating to the request for removal of Mary as trustee.

Petitioner prays as follows:

- 1. That citation issue to Mary M. Davis to show cause why she should not be removed as personal representative and as trustee of the testamentary trusts;
- 2. For an order to remove Mary M. Davis as personal representative and revoke her Letters;
- For an order to appoint Petitioner and Lynette Lucille Duston as personal representatives of the estate with full IAEA without bond;
- 4. For an order for Mary M. Davis to file an account within 60 days of her removal;
- 5. For an order that Mary M. Davis surrender all estate property in her possession to the successor co-executors;
- 6. To remove Mary M. Davis as trustee of the testamentary trusts;
- 7. To appoint Petitioner or any suitable person as successor trustee;
- 8. For an order that Mary M. Davis make an accounting and surrender all property in her possession belonging to the testamentary trust to a duly qualified successor trustee;
- 9. For attorney's fees and costs of suit incurred herein;
- 10. For such other orders and further relief as the Court deems just and proper.

Mary M. Davis filed a Demurrer that is set for hearing on 9-19-12 on the following grounds:

- 1. There is a defect or misjoinder of parties;
- 2. It fails to state facts sufficient to support any cause of action for removal; and
- 3. It is uncertain, including ambiguous and unintelligible.

Points and Authorities provided.

Objector also filed an Objection to the Declaration of Alicia D. Wrest in support of the Petition is hearsay and inadmissible herein. Cites provided.

Note: The parties reference "unrelated litigation" involving allegations of elder abuse and influence:

- <u>11CECG00872</u> Mary M. Davis v. Lynette Lucille Dustin and Douglas Jon Dustin Dismissed per request of Mary M. Davis on 7-26-12 per Court records
- 11CECG03047 Mary M. Davis v. W. Leslie Davis Matter stayed due to pending arbitration per Court records.

Fanucchi, Edward L. (for Teri Lynn Graham & Sandi Lynn Graham/Co-Executors)

(1) Petition for Final Distribution on Waiver of Accounting, and for (2) Allowance of Statutory Attorney's Fees, Extraordinary Attorneys' Fees, and Costs of Administration

DC	DOD: 09/13/11 TERI LYNN GRAHAM and SANDI LYNN NEEDS/PROBLEMS/COMMENTS:			
000.07/10/11		GRAHAM , Co-Executors, are Petitioners.		
			1. The statutory fee to the attorney is	
		Accounting is waived.	calculated incorrectly in the Petition. The	
Co	nt. from	_	correct statutory fee is \$7,392.02 calculated as follows:	
	Aff.Sub.Wit.	I & A - \$214,000.86	\$100,000.00 4.0% = \$4,000.00	
_	Verified	POH - \$137,296.07	\$100,000.00	
	, , , , , , , , , , , , , , , , , , ,	(\$135,356.07 is cash)		
<u> </u>	Inventory PTC	Executors - waive	φ. , , , σ σ σ σ σ σ σ σ σ σ σ σ σ σ σ σ	
	Not.Cred.	executors - waive	·	
<u>,</u>	Notice of Hrg	Attorney - \$7,588.02 (statutory)	\$0.00 0.5% = \$0.00	
<u> </u>		7.1.5.1.6, 47,055.52 (51010101y)	\$0.00 \$0.00	
H	Aff.Mail w/ Aff.Pub.	Attorney x/o - \$1,000.00 (for sale of	\$7,392.02	
	Sp.Ntc.	real property, ok per Local Rule)	2. Order does not state the dollar amount	
	Pers.Serv.		to be distributed to each beneficiary.	
	Conf. Screen	Costs - \$1,236.50 (filing fees,	Pursuant to Local Rule 7.6.1A - All orders	
	Letters 11/30/11	certified copies, publication)	or decrees in probate matters must be	
		Distribution, pursuant to decedent's Will, is	complete in themselves. Orders shall set forth all matters ruled on by the court,	
	Duties/Supp	to:	the relief granted, and the names of	
	Objections Video Receipt	10.	persons, descriptions of property and/or	
		Teri L. Graham - 50% of cash and ½	amounts of money affected with the	
1	CI Report 9202	of gun collection	same particularity required of judgments	
√	Order Order		in general civil matters. <u>Monetary</u> <u>distributions must be stated in dollars,</u>	
	Older	Sandi Lynn Graham - 50% of cash	and not as a percentage of the estate.	
		and ½ of gun collection	Need revised Order.	
	Aff. Posting		Reviewed by: JF	
	Status Rpt		Reviewed on: 09/12/12	
	UCCJEA		Updates:	
	Citation		Recommendation:	
🗸	FTB Notice		File 2 - Graham	

French, G. Dana (for Rodney D. Starr – Executor – Petitioner)

Final Petition and Petition for Settlement Thereof and Petition for Distribution

Final Permon and Permon for Semement Thereof and Permon for Distribution				
DO	D: 10-11-08		RODNEY D. STARR , Son and Executor with	NEEDS/PROBLEMS/COMMENTS:
			Full IAEA without bond, is Petitioner.	
			Accounting is waived.	
		1	I&A: \$187,500.00	
	Aff.Sub.Wit.		POH: \$187,500.00	
~	Verified		(real property interest only)	
~	Inventory		F (6)	
~	PTC		Executor (Statutory): Waived	
~	Not.Cred.		Attorney (Statutory): \$6,625.00	
~	Notice of Hrg			
~	Aff.Mail	W	Costs: \$999.50 (filing fees, publication, certified	
	Aff.Pub.		letters)	
	Sp.Ntc.		Distribution pursuant to Decedent's will:	
	Pers.Serv.		Dishibohofi poisodili lo Decederii s Wiii.	
	Conf. Screen		Starr Family Revocable Trust: entire estate (real	
~	Letters	1-11-12	property interest)	
	Duties/Supp			
	Objections			
	Video			
	Receipt			
	CI Report			
>	9202			
~	Order			
	Aff. Posting			Reviewed by: skc
	Status Rpt			Reviewed on: 9-12-12
	UCCJEA			Updates:
	Citation			Recommendation: SUBMITTED
~	FTB Notice			File 3 - Starr

4 David R. Jimenez (Estate)

Case No. 12CEPR00082

Atty Kruthers, Heather H. (for Public Administrator – Administrator/Petitioner)

Atty Camenson, David M. (for David L. Jimenez & Raymond Sandoval – sons/Objectors)

Atty Shahbazian, Steven L. (for Conrad Jimenez – son)

Report of Administrator of Insolvent Estate and Request for Final Discharge (Prob. C. 11600)

DC	D: 10/10/11		PUBLIC ADMINISTRATOR, Administrator, is Petitioner. NEEDS/PROBLEMS/C	
			Petitioner states: OMMENTS:	
			PUBLIC ADMINISTRATOR was appointed as Administrator	
			by the Court on 03/06/12	
Cont. from 070512,			2. No Letters of Administration were ever issued because CONTINUED	
071812			Petitioner was able to determine right away that there FROM	
Aff.Sub.Wit.			were no assets to marshal. 3. The initial Petition for probate stated that there were two. 07/18/12	
√	Verified		3. The initial Petition for probate stated that there were two parcels of real property and bank accounts belonging to Minute Order from	
	Inventory	n/a	the estate. However, Petitioner has determined that the 07/18/12 states:	
	PTC		properties were deeded by the decedent and the bank Counsel informs the	
√		n/a	accounts had beneficiary designations. Therefore, Court that a bank	
-	Not.Cred.		petitioner wishes to close the estate, because it is now insolvent.	
√	Notice of Hrg		insolvent. 4. A Creditor's Claim was filed against the estate by David estate is not	
√	Aff.Mail	w/	M. Camenson; however, the estate is insolvent and the insolvent Counsel	
	Aff.Pub.		claim cannot be paid.	
	Sp.Ntc.		5. The estate is in a condition to be closed.	
	Pers.Serv.		Petitioner prays for an Order that:	
	Conf. Screen		The Petition be settled, allowed and approved, and all	
	Letters	n/a	acts of the Petitioner as Administrator be confirmed and	
	Duties/Supp		approved;	
✓	Objections		Due to the insufficiency of the estate, it is not possible to pay the outstanding debts of the estate and there will be	
	Video		no estate to distribute; and	
	Receipt		The Public Administrator be discharged as Administrator	
	CI Report		of the estate.	
	9202	n/a	Objection to Report of Administrator of Insolvent Estate and	
✓ Order			Request for Final Discharge filed 06/28/12 by David L. Jimenez	
	Aff. Posting		and Raymond Sandoval states that the assertion that the estate Reviewed by: JF	
Status Rpt			has no assets is false. Objectors state that the decedent held title to two vehicles (a 1995 Ford and 1987 Toyota) as well as 09/12/12	
	UCCJEA		numerous other personal property items. Objectors further state that the Public Administrator never contacted either objector	
	Citation		(decedent's son and foster son and named beneficiaries in Recommendation:	ᆌ
	FTB Notice	n/a	decedent's Will) or their attorney David Camenson. Had File 4 - Jimenez	٦
			Petitioner contacted any of these individuals they would have discovered that the estate was not insolvent, or at least had some assets. Objectors request: 1) That the final report of Petitioner not be confirmed or approved; 2) That the Public Administrator not be discharged as Administrator of the Estate at this time; and 3) That the Public Administrator be ordered to continue its research regarding the assets of the estate by at least contacting each beneficiary who may have knowledge of such assets. Continued on Page 2	
<u> </u>			Commoca on rage 2	_

Case No. 12CEPR00082

4 David R. Jimenez (Estate)

Page 2

Response to Objection to Report of Administrator of Insolvent Estate and Request for Final Discharge filed 07/02/12 by the Public Administrator/Petitioner states: The Deputy Public Administrator assigned to this matter was Noe Jimenez. He conducted the following investigation to determine the lack of assets in the estate:

- a. He twice went to the property at 3039 North 7th Street, Fresno, CA 93703 to meet with David L. Jimenez (decedent's son). He left his business card for David to contact him regarding the estate as Noe does not have David's phone number. Noe never received a return call from David or any other response to his business cards.
- b. He spoke by phone to Conrad (decedent's son), who provided details of the decedent's assets. Conrad reported that his father deeded the real property to him a couple of months before he died. Noe verified this transaction with Chicago Title. The employee handling the transaction had no concerns about the decedent's capacity to transfer title to his son.
- c. Conrad further reported that the decedent had also given him some personal items before his death, including his service revolver, badge, and similar items. Conrad further reports that when their father died, his brother David removed Raymond Sandoval (decedent's foster son) from the house on North 7th Street. Conrad reported that his father had some items in the residence but David would not allow him to enter the residence, even though the property belonged to him. Conrad confirmed that all personal items were transferred months before the decedent's death.
- d. Noe spoke with David Camenson, attorney for the Objectors, on three separate occasions. Mr. Camenson never asked about or offered information about any assets.
- e. Noe spoke to Conrad regarding the vehicles. Conrad confirmed that the decedent gave David's daughter, Janet Sellars, a Ford Windstar by signing a DMV form in July 2011. He further reported that the decedent gave Conrad's ex-wife, Anna DiFalco, the 1987 Toyota Cressida four years before the decedent died. Although the Objectors provided title to two vehicles, investigation revealed that neither belonged to the decedent at the time of his death.

Based on this information, Petitioner prays that:

- 1. The objections of David L. Jimenez and Raymond Sandoval be denied in their entirety; and
- 2. The Public Administrator's report be settled as prayed.

Response of Conrad Jimenez to Objection to Report of Administrator of Insolvent Estate and Request for Final Discharge filed 07/02/12 states: the two vehicles objectors refer to in their objection were not owned by the decedent at the time of his death as he had transferred ownership of both of them. The vehicle identified as a 1987 Toyota was transferred in 2009 to Anna Maria DiFalco and the 1995 Ford was transferred to Janet Sellers. Respondent further states that as to the "personal property" which is not specifically itemized in the Objection, he is personally aware that most all of the personal property of the decedent was either disposed of by the decedent or had little or no value at the date of his death. Even if there is any merit to the claim that the assets referred to in the Objection may be subject to probate court jurisdiction, all items referred to would be included within Probate Code §§ 13100-13116 as personal property that can be disposed of by the "Affidavit Procedure for Collection or Transfer of Personal Property". Therefore, even if the personal representative could assert ownership or control over any specific personal property asset, by his/her consent there would be nothing in a probate estate to administer. Further, the continuation of an essentially valueless estate could expose the estate to charges and expenses, which it should not incur and cannot afford. If the Objectors have any further information in reference to alleged "estate assets" they can and should communicate that information, with supporting documentation, to the public administrator. To the extent that the miscellaneous personal property described in the Objection is alleged to be the only basis to retain the personal representative, these are insufficient arounds to require the continuation of this probate proceedings. Respondent requests that the Objection be overruled and that the request for discharge by the public administrator be aranted.

Magness, Marcus D. (for Derek Simmross and Brigitte Green – Petitioners)

Amended Petition of Will and for Letters Testamentary; Authorization to Administer Under the Independent Administration of Estate Act

DO	D: 07/01/12		DEREK SIMMROSS and BRIGITTE GREEN,	NEEDS/PROBLEMS/COMMENTS:
			son and daughter/named Co- Executors without bond, are Petitioners.	Note: The court may require bond if the proposed personal representative resides outside
Col	Aff.Sub.Wit.		Petitioner Derek Simmross is a resident of Sweden.	California or for other good cause, even if the will waives bond, pursuant to California Rules of Court
·	Inventory PTC		Full IAEA – OK	7.201(b) and Probate Code 8571.
✓ ✓	Not.Cred. Notice of Hrg Aff.Mail	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	Will dated 06/13/96	
√ ————————————————————————————————————	Aff.Pub. Sp.Ntc.	w/ 	Residence: Fresno Publication: The Business Journal	
-	Pers.Serv. Conf. Screen Letters		Estimated Value of the Estate:	
√ ·	Duties/Supp Objections		Personal property - \$200,000.00 Probate Referee: STEVEN DIEBERT	
	Video Receipt CI Report		Tresdic Kereres, Cravant Brazant	
√	9202 Order			
	Aff. Posting Status Rpt UCCJEA			Reviewed by: JF Reviewed on: 09/12/12 Updates:
	Citation FTB Notice			Recommendation: File 6B - Simmross